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8	BEFORE THE RESPIRATORY CARE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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10	STATE OF CAL	AFORMA	
11	In the Matter of the Accusation Against:	Case No. R-2048	
12	JACOB IBARRA 1600 Saratoga Avenue, #403-243	ACCUSATION	
13	San Jose, CA 95129		
14	Respiratory Care Practitioner License No. 20564		
15	Respondent.		
16			
17	Complainant alleges:		
18	<u>PARTIES</u>		
19	1. Stephanie Nunez (Complainant) brings this Accusation solely in her		
20	official capacity as the Executive Officer of the Respiratory Care Board of California,		
21	Department of Consumer Affairs.		
22	2. On or about December 24, 1998, the Respiratory Care Board issued		
23	Respiratory Care Practitioner License Number 20564 to Jacob Ibarra (Respondent). The		
24	Respiratory Care Practitioner License was in full force and effect at all times relevant to the		
25	charges brought herein and will expire on February 29, 2008, unless renewed.		
26	<u>JURISDICTION</u>		
27	3. This Accusation is brought before the Respiratory Care Board (Board),		
28	Department of Consumer Affairs, under the authority of the following laws. All section		
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references are to the Business and Professions Code unless otherwise indicated.

- Section 3710 of the Code states: "The Respiratory Care Board of
   California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
   8.3, the Respiratory Care Practice Act]."
- 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."
  - 6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

- "(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction."
- "(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500)."
  - 7. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

"(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with section 4015) of Chapter 9."

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## 8. Section 3752 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

9. California Code of Regulations, title 16, section 1399.370, states:

"For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act."

## COST RECOVERY

10. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

11. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall

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include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

- 12. Section 3753.1 of the Code states:
- "(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

## FIRST CAUSE FOR DISCIPLINE

(Conviction of a substantially-related crime; Possession of marijuana)

- 13. Respondent is subject to disciplinary action under sections 3750(d) and 3752 [conviction], 3750(g) and 3750.5(a) in that he entered a plea of guilty to a violation of Vehicle Code section 23222(b), possession of marijuana, a misdemeanor, and he was in possession of a controlled substance (marijuana). The circumstances are as follows:
- 14. On or about November 4, 2005, Campbell Police Officer F. Ramirez was working traffic enforcement. He observed respondent driving 50 miles per hour in a 35 mile per hour zone. He made a traffic stop, and asked respondent for identification. As Officer Ramirez spoke to respondent, he smelled marijuana. He asked respondent if he had any marijuana, and initially respondent denied having any. Respondent then admitted he had marijuana and stated that it was in the glove box. Officer Ramirez searched the vehicle and found a small quantity of a substance, which based on the officer's training and experience, he believed to be marijuana. Officer Ramirez also found a marijuana pipe in the center console. He issued a citation to respondent for violations of Vehicle Code section 22350 [speeding], an infraction, and Vehicle Code section 23222(b), possession of marijuana, a misdemeanor.
- 15. On or about March 21, 2006, respondent appeared for arraignment before Judge Derek Woodhouse in the Hall of Justice, San Jose, California. He entered a plea to Counts 1 and 2, and was ordered to attend a Pacific Seminar class on marijuana.
- 16. On or about May 2, 2006, respondent appeared before Judge James H. Chang. Respondent provided proof that he had attended a Pacific Seminar class, Count 2 was dismissed in the interests of justice, and he was ordered to pay fine.

1	17. Therefore, respondent's license is subject to discipline based on his		
2	possession of a controlled substance, marijuana, in violation of Business & Professions code		
3	section 3750(d) and 3752, 3750.5(a), 3750(g) and CCR 1399.370(a).		
4	DISCIPLINE CONSIDERATIONS		
5	18. To determine the degree of discipline, if any, to be imposed on		
6	Respondent, Complainant alleges that on or about December 1, 2003, the Board adopted a		
7	Stipulated Settlement for Public Letter of Reprimand against Jacob Ibarra, Case No. R-1812,		
8	based on respondent's December 12, 2002 conviction for driving under the influence of alcohol,		
9	in violation of Business & Professions code section 3750(d), 3752 and 3750.5(b). That decision		
10	is now final and is incorporated by reference as if fully set forth.		
11	<u>PRAYER</u>		
12	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
13	alleged, and that following the hearing, the Respiratory Care Board issue a decision:		
14	Revoking or suspending Respiratory Care Practitioner License no. Number		
15	20564, issued to Jacob Ibarra.		
16	2. Ordering Jacob Ibarra to pay the Respiratory Care Board the costs of the		
17	investigation and enforcement of this case, and if placed on probation, the costs of probation		
18	monitoring;		
19	3. Taking such other and further action as deemed necessary and proper.		
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21	DATED: January 5, 2007		
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23	Original signed by Liane Zimmerman for:		
24	STEPHANIE NUNEZ Executive Officer		
25	Respiratory Care Board of California		
26	Department of Consumer Affairs State of California Complainant		
27	Complaniant		
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